

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of: )  
 )  
Amendment of Section 73.202(b), ) MM Docket No. 95-107  
Table of Allotments, ) RM-8661  
FM Broadcast Stations. )  
(Clark, Colorado) )

DOCKET FILE COPY ORIGINAL

TO: Chief, Allocations Branch

**COMMENTS AND COUNTERPROPOSAL OF**  
**ROCKY MOUNTAIN RADIO COMPANY, LLC**

On behalf of Rocky Mountain Radio Company, LLC ("Rocky Mountain"), we hereby submit these comments on the Notice of Proposed Rulemaking ("NPRM") in the captioned proceeding released by the Commission on July 13, 1995. Rocky Mountain is the proposed assignee of Channel 224A in Glenwood Springs, Colorado, FCC File Number BPH-940120MA. Specifically, the proposed allotment should not be made because Clark does not constitute a community for allotment purposes. Alternatively, the Commission should substitute Channel 255A for Channel 225A in Clark to accommodate a proposed upgrade of Channel 224A in Glenwood Springs, Colorado.

**I. CLARK DOES NOT CONSTITUTE A COMMUNITY FOR ALLOTMENT PURPOSES.**

The Commission has proposed to allot Channel 225C2 to Clark, Colorado.<sup>1</sup> Rocky Mountain opposes the allotment of Channel 225C2 to Clark on the grounds that Clark does

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<sup>1</sup>The Petitioner, Brian M. Encke d/b/a BME Broadcasting, originally requested the allotment of Channel 251C2 at Clark, Colorado. However, channel 251C2 did not meet the Commission's minimum spacing requirements and thus the Commission substituted Channel 225C2 at Clark for Channel 251C2. NPRM at footnote 1.

not constitute a "community" as that term has been defined by the Commission. See NPRM at 1 (citing cases).

A geographic area generally qualifies as a "community" if it is incorporated, listed in the U.S. Census, or other social, economic or cultural indicia render it a "community" for allotment purposes. NPRM at 1. Mere geographical location is not sufficient to establish "community status." Report and Order in MM Docket No. 93-279, RM-8368 and 8385 (July 17, 1985) at 3. Rather, to constitute a community, a geographic area must have a significant population and community based civic, social or religious organizations. Id.

Far from being a "community," Clark is an isolated population pocket with no more than 300 full-time residents. NPRM at footnote 2. Clark is not listed in the U.S. Census nor is it incorporated. Moreover, Clark does not have a police department and it has only one retail business, a general store. Therefore, based on established Commission standards, Clark does not constitute a community for allotment purposes.

## **II. ALTERNATIVELY, THE PROPOSED CHANNEL SHOULD BE SUBSTITUTED.**

If the Commission decides to allot a channel to Clark, Rocky Mountain proposes that the Commission allot Channel 255C2 to Clark instead of Channel 225C2 so as to accommodate a proposed upgrade of Channel 224A to Channel 224C at Glenwood Springs, Colorado. As shown in the attached Technical Statement prepared by W. Jeffrey Reynolds of du Treil, Lundin & Rackley, Inc., Channel 224A at Glenwood Springs can be upgraded to Channel 224C if the Commission allots Channel 255C2 to Clark instead of Channel 225C2.<sup>2</sup>

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<sup>2</sup>The current permittee of Channel 224A, Beachport Communications, Inc., indicated its intention to allot Channel 224C to Glenwood Springs in Comments filed on April 1, 1994 in MM Docket 94-3.


Rocky Mountain is filing a "one step" application on FCC Form 301 proposing an upgrade from Channel 224A to 224C. Upgrading channel 224 in Glenwood Springs will result in an expanded FM service area for Glenwood Springs and thus serve the public interest.

Moreover, substitution of Channel 255C2 for Channel 225C2 in Clark will not harm

Petitioner (who initially requested a different channel altogether, see infra at note 1), since it will still permit allotment of a class A channel to Clark in the event that the Commission determines it to be a community for allotment purposes

Respectfully submitted,

**ROCKY MOUNTAIN RADIO COMPANY, LLC**

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Its Attorneys

September 5, 1995

TECHNICAL EXHIBIT  
COMMENTS AND COUNTERPROPOSAL  
IN MM DOCKET NO. 95-107  
PREPARED ON BEHALF OF  
ROCKY MOUNTAIN RADIO COMPANY, LLC  
CLARK AND GLENWOOD SPRINGS, COLORADO

Technical Narrative

This technical narrative and associated exhibits have been prepared on behalf of Rocky Mountain Radio Company, LLC ("Rocky Mountain") in support of comments and counterproposal in the **Notice of Proposed Rule Making** in MM Docket No. 95-107 (adopted June 29, 1995; released July 13, 1995) which proposed the allotment of channel 225C2 at Clark, Colorado.

Proposed Change in Table of Allotments

As detailed elsewhere in these comments and counterproposal, it is not believed that Clark qualifies as a "community" for allotment purposes. However, as an alternative to the Commission's proposal to allot channel 225C2 to Clark, Rocky Mountain proposes the substitution of channel 255C2 at Clark in order to accommodate the allotment of channel 224C to Glenwood Springs, Colorado. A "one-step" application to upgrade the authorized channel 224A facility at Glenwood Springs (FCC File No. BPH-940120MA) to channel 224C is being filed contemporaneously with these comments and counterproposal.<sup>1</sup>

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<sup>1</sup> In comments filed in MM Docket 94-3, Rocky Mountain (then Beachport Communications, Inc.) indicated its intention to allot channel 224C to Glenwood Springs.

<u>City</u>	<u>Present</u>	<u>Proposed</u>
Clark, Colorado	--	255C2
Glenwood Springs, Colorado	224A, 256C3	224C, 256C3

Compliance With FCC Rules

Figure 1 is a separation study for channel 225C2 at Clark.<sup>2</sup> As shown, this proposal is short-spaced to both the allotment reference site and "one-step" application site for channel 224C at Glenwood Springs. Figure 2 is a separation study for channel 255C2 at Clark from the same Clark reference coordinates employed for channel 225C2 and, as indicated, all of the separation requirements are met. Furthermore, channel 255C2 provides more than adequate flexibility in transmitter site selection with the closest separation requirement being more than 18 kilometers from the Clark reference coordinates.

Figure 3A is a separation study for channel 224C at Glenwood Springs from the chosen allotment reference point located approximately 11 km west-northwest of Glenwood Springs. As indicated, all of the separation requirements are met with the exception of channel 225C2 at Clark. Figure 3B depicts the fully-spaced transmitter site location area and it demonstrates that minimum 70 dBu coverage of Glenwood Springs can be obtained from the

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<sup>2</sup> The Clark reference coordinates utilized by the FCC are N42°42'22"/W106°55'07".

reference point presuming use of minimum Class C facilities. Figure 3C provides a portion of a 7.5 minute series USGS topographic quadrangle for the allotment reference site satisfying the requirements of the Public Notice entitled "FCC Clarifies Transmitter Site Map Requirements".<sup>3</sup> Furthermore, it is believed that the allotment reference site is suitable for tower construction in accordance with footnote 19 of the Report and Order in MM Docket 92-159.

Figure 4A is a separation study for the channel 224C proposed transmitter site that will be specified in the "one-step" upgrade application at Glenwood Springs.<sup>4</sup> As shown, this site is fully-spaced with the exception of KSPZ, channel 225C, Colorado Springs, Colorado. With respect to KSPZ, the contour protection provisions of Section 73.215 will be employed. Figure 4B is a portion of a 7.5 minute series USGS topographic quadrangle for the proposed transmitter site. The "one-step" application employs equivalent maximum Class C facilities consisting of an effective radiated power of 58 kW and antenna height above average terrain of 753 meters.

#### Population and Area Analysis

The 1 mV/m (60 dBu) contour of the authorized channel 224A operation at Glenwood Springs encompasses

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<sup>3</sup> Mimeo 3693, released April 5, 1985. See 51 Fed. Reg. 45945 (December 23, 1986).

<sup>4</sup> The proposed channel 224C site to be specified in the "one-step" application is the existing site of KREG-TV, channel 3, Glenwood Springs (BLCT-840207KG).

14,474 persons within 953 square kilometers. The 1 mV/m contour based on the channel 224C facilities specified in the "one-step" application will encompass 85,323 persons within 25,591 square kilometers. This contour will also subsume the 1 mV/m contour for the authorized channel 224A operation. Therefore, the substitution of channel 255C2 for 225C2 at Clark will permit the upgrade of channel 224 from Class A to C operation and the provision of 1 mV/m service to an additional 70,849 persons within 24,638 square kilometers.

The population within each 1 mV/m contour was calculated using a computer program that utilizes the 1990 U.S. Census database of "population centroids". The program adds the populations of those U.S. Census designated areas whose centroid was within each service area. The area within 1 mV/m contour was calculated using a root mean square algorithm.

### Conclusion

Channel 255C2 can be substituted for channel 225C2 at Clark, Colorado in compliance with all applicable Commission Rules. This will permit the upgrade of channel 224A to 224C at Glenwood Springs, Colorado. Furthermore, adoption of the proposal will increase the number of

persons within the 1 mV/m contour for the upgraded channel  
224C operation to 70,849 persons within 24,638 square  
kilometers.



W. Jeffrey Reynolds

du Treil, Lundin & Rackley, Inc.  
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Sarasota, Florida 34236

August 30, 1995



TECHNICAL EXHIBIT  
COMMENTS AND COUNTERPROPOSAL  
IN MM DOCKET NO. 95-107  
PREPARED ON BEHALF OF  
ROCKY MOUNTAIN RADIO COMPANY, LLC  
CLARK AND GLENWOOD SPRINGS, COLORADO

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Job Title :Proposed Ch. 225C2, Clark, CO          Separation Buffer   32 km  
                                                    FCC DB Date  : 08/24/95  
Channel 225C2 ( 92.9 MHz)      Coordinates : 40-42-22 106-55-07
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\*\* End of separation study for channel 225C2 \*\*

<sup>3</sup> Channel 255C2 is available as a substitute for channel 225C2. See Figure 2.

Job Title :Proposed Ch. 255C2, Clark, Colorado      Separation Buffer    32 km  
FCC DB Date : 08/24/95  
Channel 255C2 ( 98.9 MHz)      Coordinates : 40-42-22 106-55-07

\*\* End of separation study for channel 255C2 \*\*

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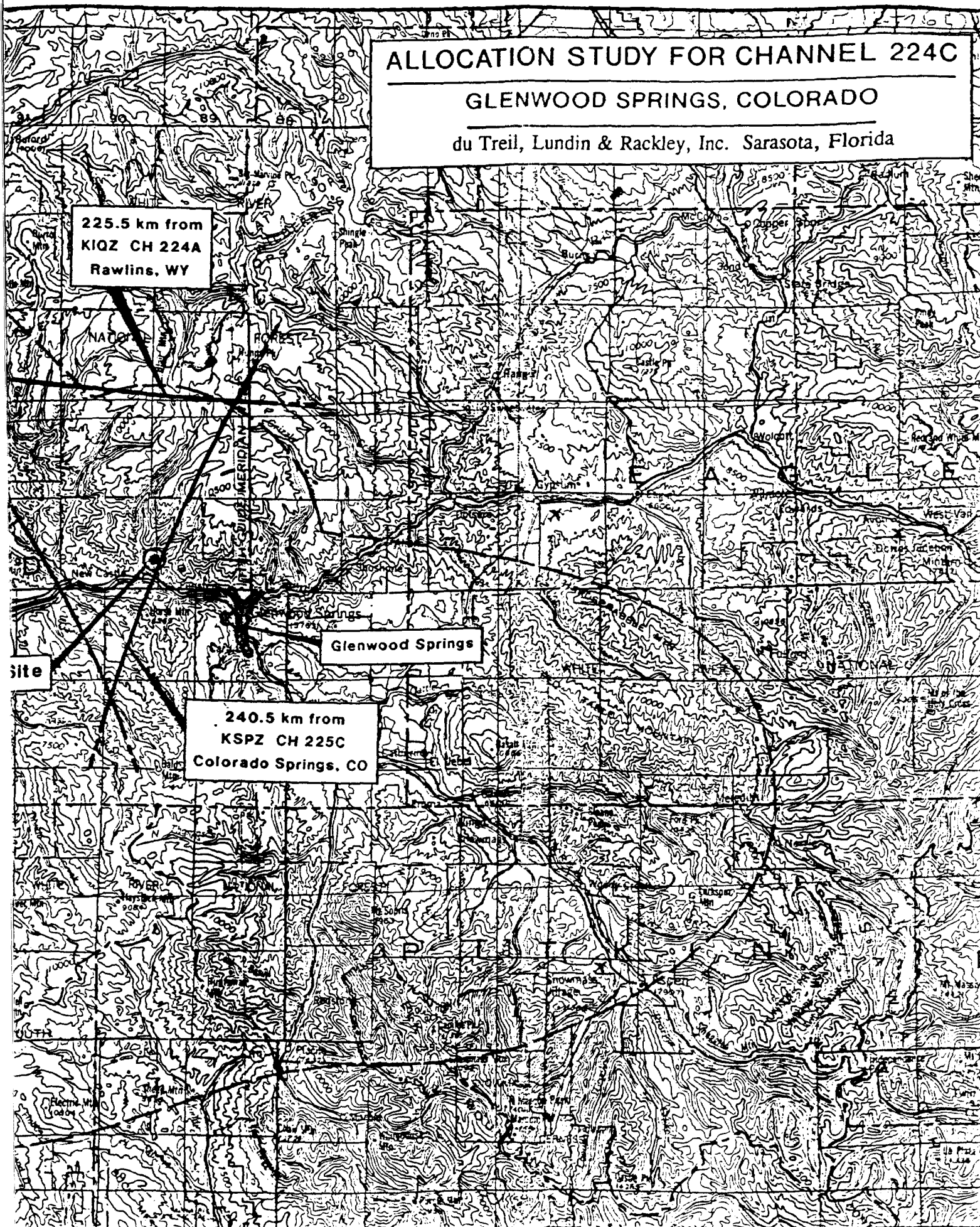
Job Title :Ch. 224C Reference Site          Separation Buffer  32 km
          Glenwood Springs, Colorado        FCC DB Date  : 08/24/95
Channel 224C  ( 92.7 MHz)                   Coordinates  : 39-35-31 107-25-57

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\*\* End of separation study for channel 224C \*\*

<sup>1</sup> Channel 255C2 is available as a substitute for channel 225C2 at Clark. See Figure 2.

Figure 3B



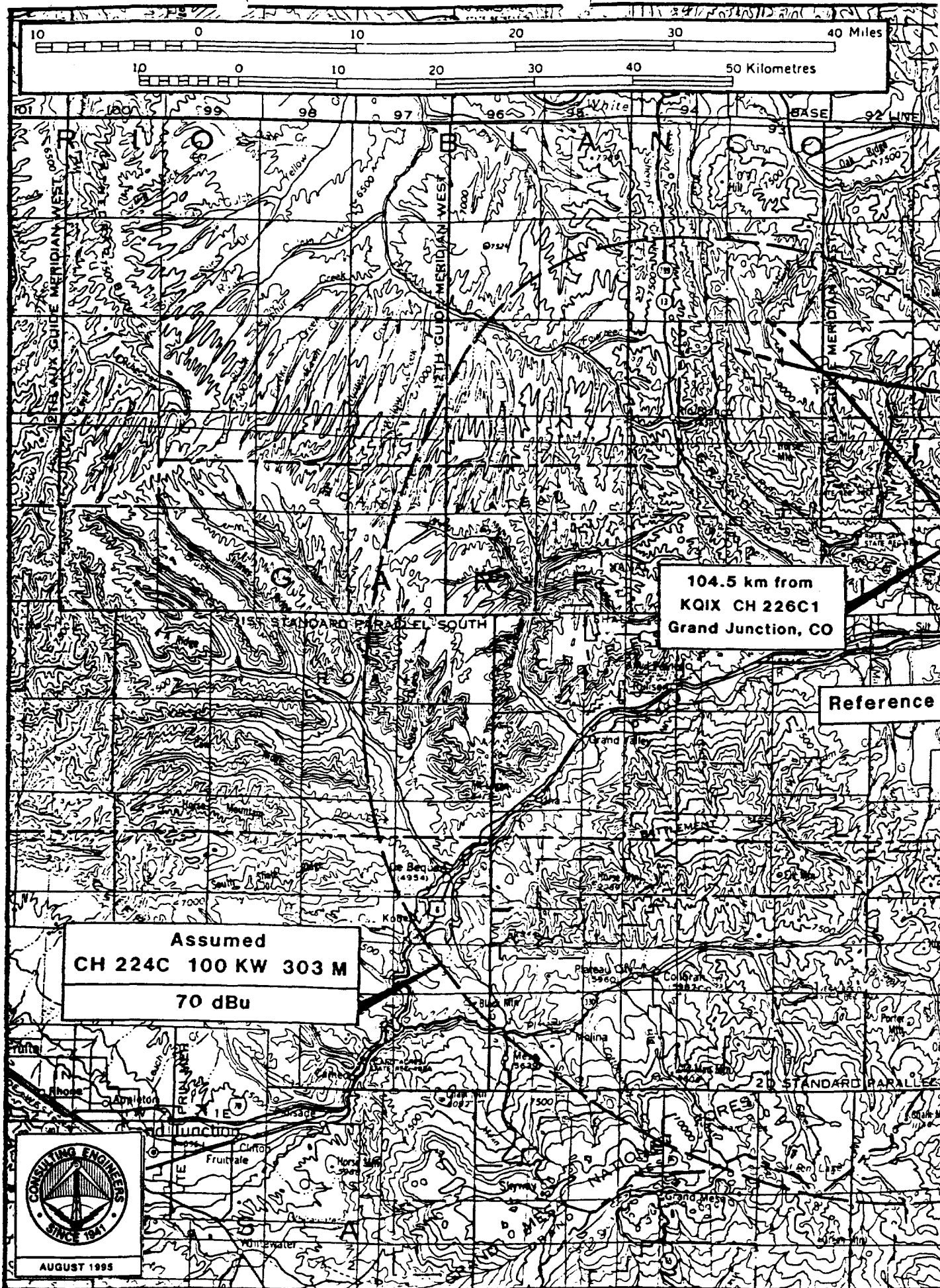
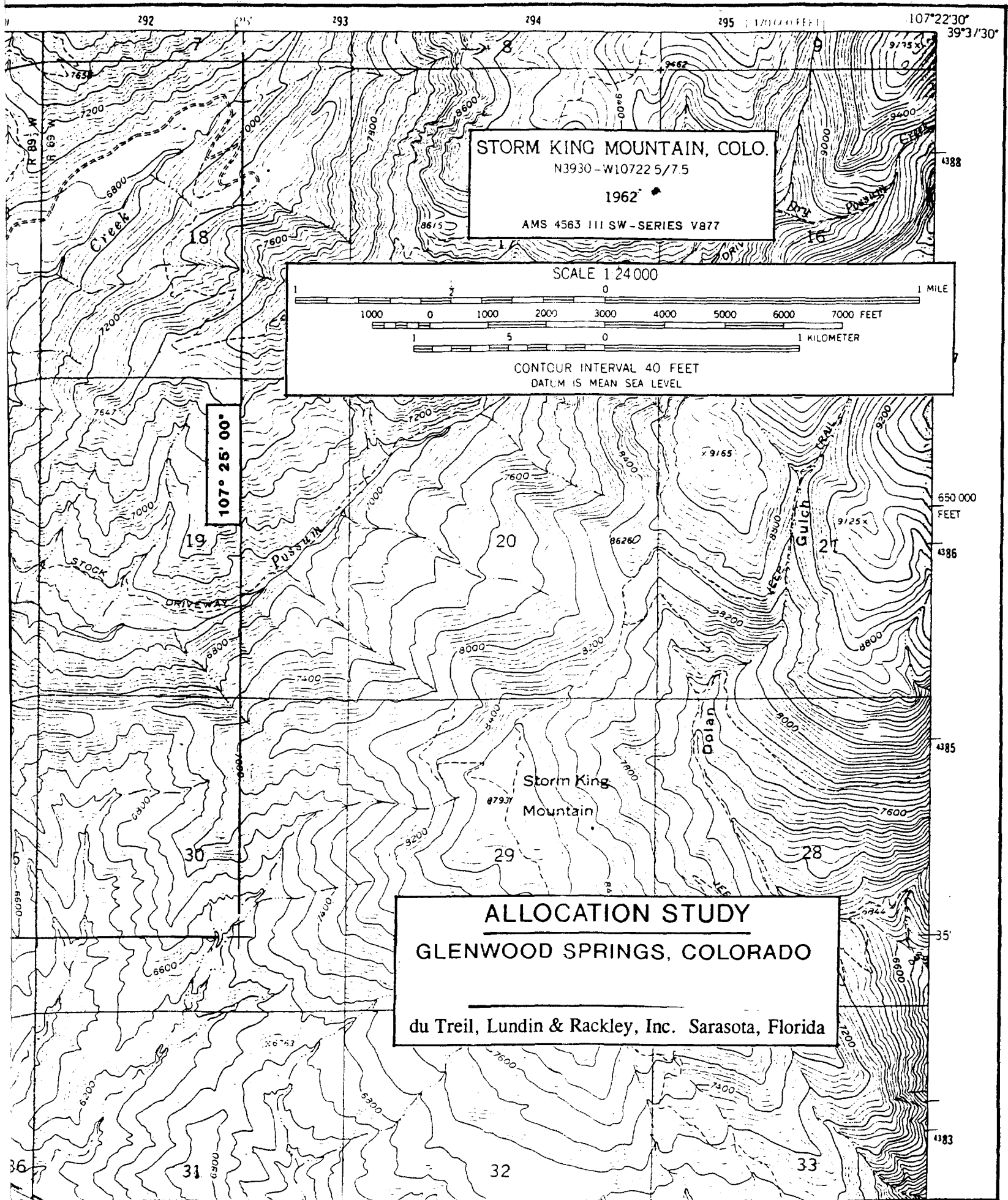


Figure 3C







AUGUST 1985

288

27°30'

290

IGLENWOOD SPRINGS 1:125

39° 37' 30"

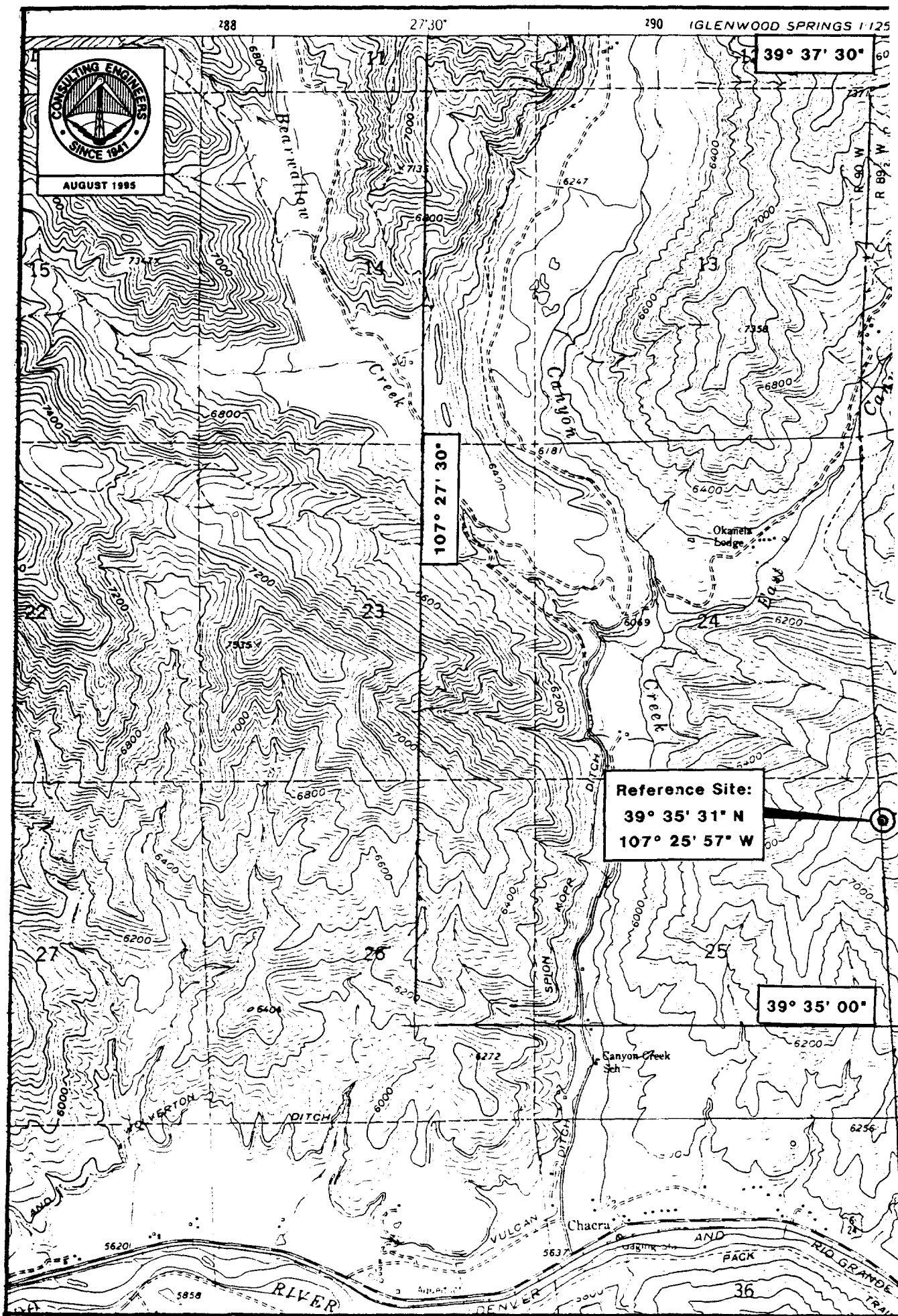
107° 27' 30"

Reference Site:

39° 35' 31" N

107° 25' 57" W

39° 35' 00"



TECHNICAL EXHIBIT  
 COMMENTS AND COUNTERPROPOSAL  
 IN MM DOCKET NO. 95-107  
 PREPARED ON BEHALF OF  
 ROCKY MOUNTAIN RADIO COMPANY, LLC  
 CLARK AND GLENWOOD SPRINGS, COLORADO

FM ALLOCATION STUDY

Job Title : Proposed Ch. 224C, Glenwood Springs, CO Separation Buffer 32 km  
 FCC DB Date : 08/24/95  
 Channel 224C ( 92.7 MHz) Coordinates : 39-25-05 107-22-01

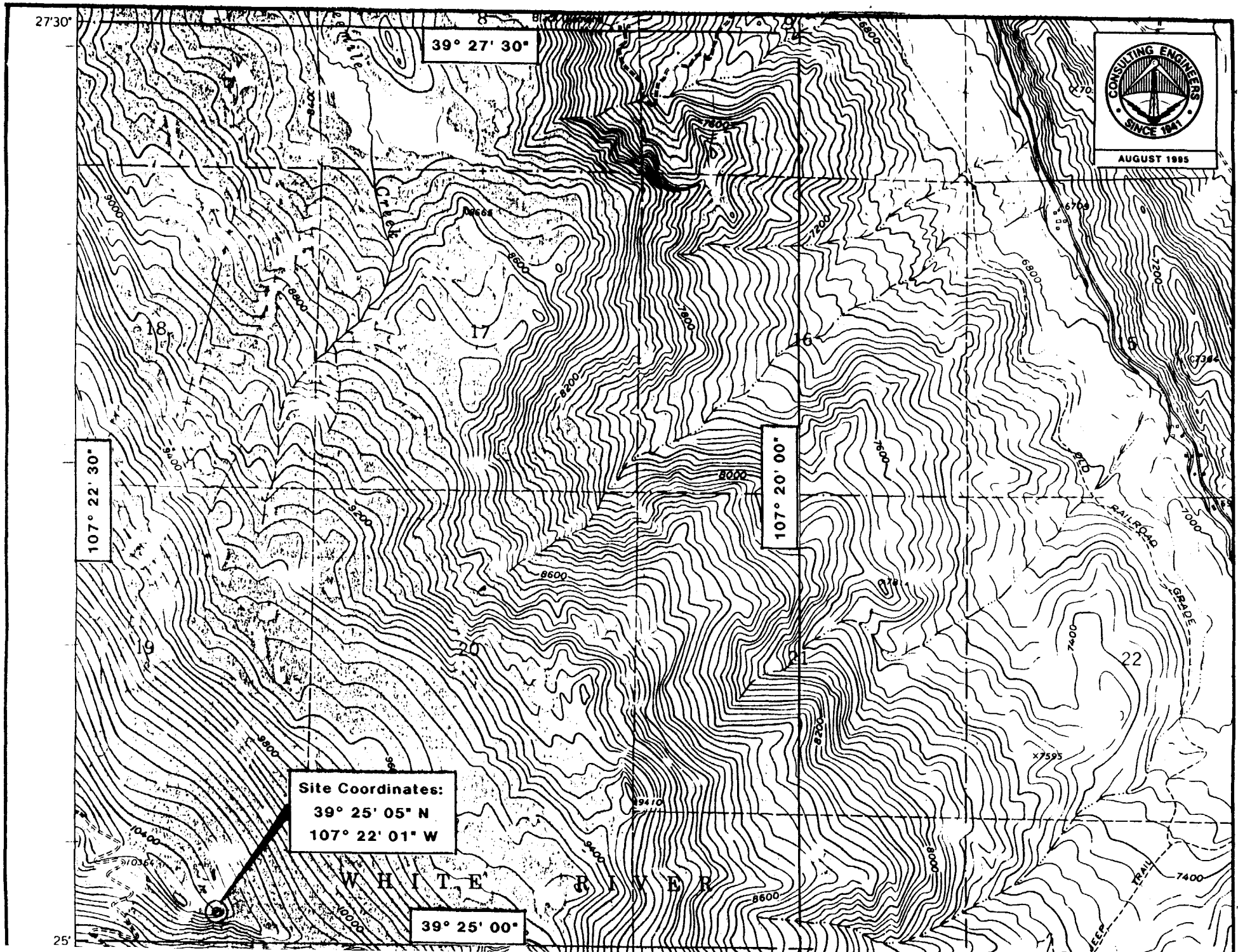
Call Status	City State	FCC File No.	Channel Freq.	ERP(kW) HAAT(m)	Latitude Longitude	Bearing deg-Tru	Dist. (km)	Req. (km)
KYSL	Frisco		221A	.290	39-33-22	81.5	108.83	95
LIC	CO	BLH880602KA	92.1	321.0	106-06-53		13.83	CLOSE
*To Channel 230A Per D89-172								
KJYEFM	Grand Junction		222C	100.	39-04-00	252.2	125.19	105
LIC	CO	BLH891219KD	92.3	420.0	108-44-41		20.19	CLEAR
KZDG	Greeley		223C1	57.0 DA	40-05-47	69.5	224.34	209
LIC	CO	BLH940426KB	92.5	377.0	104-54-04		15.34	CLOSE
NEW	Glenwood Springs		224A	1.0	39-33-43	15.0		
CP	CO	BPH940120MA	92.7	-198.0	107-19-01			
	Clark		225C2		40-42-22	14.8	148.05	188
PADD	CO	RM8661	92.9	.0	106-55-07		-39.95	SHORT <sup>1</sup>
PRM-Alternate Consideration								
KSPZ	Colorado Springs		225C	72.	38-44-44	108.3	229.34	241
LIC	CO	BLH850207LW	92.9	649.0	104-51-39		-11.66	SHORT <sup>2</sup>
WAIVER OF MINIMUM POWER GRANTED FOR CLASS C								
KQIX	Grand Junction		226C1	100.	39-05-35	251.6	112.19	105
LIC	CO	BLH890417KB	93.1	-29.0	108-35-51		7.19	CLOSE

\*\* End of separation study for channel 224C \*\*

<sup>1</sup> Channel 255C2 is available as a substitute for channel 225C2 at Clark, Colorado. See Figure 2.

<sup>2</sup> Contour protection will be provided in accordance with Section 73.215.



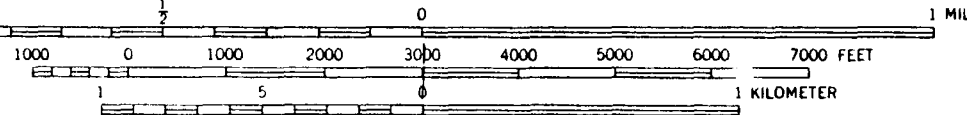


CATTLE CREEK, COLO.

N3922.5-W10715/7.5

1961

SCALE 1:24 000



CONTOUR INTERVAL 40 FEET

DOTTED LINES REPRESENT 20-FOOT CONTOURS

DATUM IS MEAN SEA LEVEL

PROPOSED TRANSMITTER LOCATION

GLENWOOD SPRINGS, COLORADO

du Treil, Lundin & Rackley, Inc. Sarasota, Florida

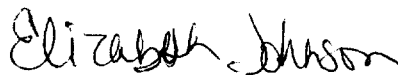
39°22'30"  
107°22'30"

1 480 000 FEET 20'

CERTIFICATE OF SERVICE

I, Elizabeth Johnson, a secretary with the law firm of Cole, Raywid & Braverman, do hereby certify that I have, this 5th day of September, 1995, caused to be sent by U.S. first class mail, postage-prepaid, a true and correct copy of the foregoing to:

Brian M. Encke d/b/a BME Broadcasting  
R.R. #1, Box 225  
Linden, PA 17744

  
Elizabeth Johnson